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APPLICATION OF OHIO'S SOLID WASTE SITING CRITERIA

08/01/94

USEPA
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LETTER

OEPA



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

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Dave-
FYI
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file

*Copies: Carr
Jewett*

DOCUMENT# 5085 REPLY TO THE ATTENTION OF:

FILE# 106.4.19
WBS# _____

AUG 01 1994

Mr. John J. Mack, Esquire
Ohio Environmental Protection Agency
Post Office Box 1049
1800 WaterMark Drive
Columbus, Ohio 43266-0149

HRE-8J



RE: Application of Ohio's
Solid Waste Siting
Criteria

Dear Mr. Mack:

Your June 15, 1994, letter and the attached documents demonstrate that the Ohio Environmental Protection Agency (OEPA) will not, in consideration of engineering controls, waive the geological siting requirements of Sections 3745-27-07(H)(2)(b), (c), and (3)(a) of the Ohio Administrative Code. These Ohio siting requirements have been identified as Applicable or Relevant and Appropriate Requirements (ARARs) for certain remedial actions under consideration for the United States Department of Energy's (U.S. DOE) Fernald Environmental Management Project (FEMP).

As acknowledged in your letter, U.S. DOE may propose remedial actions for the FEMP which involve creation of an on-site solid waste disposal unit. Preliminary indications are that the FEMP geology likely will not meet all of the Ohio siting requirements nor the Ohio criteria for a Section 3734.02(G) of the Ohio Revised Code (ORC) exemption from those requirements. Therefore, a U.S. DOE proposal to establish a solid waste disposal unit at the FEMP will probably include engineering controls.

Any United States Environmental Protection Agency (U.S. EPA) decisions concerning remedial actions at the FEMP will be made in accordance with requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 6901 et seq., including those for public notice and comment. Therefore, U.S. EPA cannot now pre-judge the merit of any proposed remedy, including the establishment of a solid waste disposal unit at the FEMP. However, as a practical matter, it is necessary for U.S. EPA and OEPA to give U.S. DOE a sense for what range of remedial actions may be acceptable.

Based upon currently available geological information and U.S. DOE's preliminary design specifications for a solid waste disposal unit at the FEMP, U.S. EPA believes that such a unit can assure that there will be no adverse impact to human health or safety or to the environment, which is the level of protection required for a Section 3734.02(G) ORC exemption to the siting requirements. Pursuant to Section 121(d)(4)(D) of CERCLA, U.S. EPA may waive an ARAR when:

the remedial action selected will attain a standard of performance that is equivalent to that required under the otherwise applicable standard, requirement, criteria, or limitation, through use of another method or approach.

KEY → Therefore, if U.S. EPA is convinced that a solid waste disposal unit may be constructed at the FEMP which, through engineering controls, will attain a standard of performance equivalent to that required by Ohio law, U.S. EPA may pursuant to Section 121(d)(4)(D) of CERCLA waive compliance with the Ohio siting requirements as ARARs.

U.S. EPA understands that OEPA would not agree that engineering controls can attain the same level of protectiveness as certain geological conditions but that in consideration of circumstances unique to the FEMP, OEPA would not oppose such a waiver.

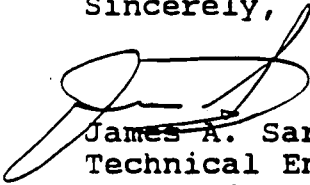
U.S. EPA believes it is appropriate, therefore, for U.S. DOE to continue to consider and perhaps ultimately propose remedial actions for the FEMP that include establishment of a solid waste disposal unit at the FEMP. Unless OEPA has any objections, that is the direction U.S. EPA will give to U.S. DOE.

Again, U.S. EPA's decision regarding waiver of the Ohio siting criteria ARARs, or any other ARARs, will be made as part of the Records of Decision for the various Operable Units at the FEMP after consideration of any public comments.

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If you have any questions concerning this letter, you may contact me at (312) 886-0992 or Brian Barwick at (312) 886-6620.

Sincerely,



James A. Saric, Remedial Project Manager
Technical Enforcement Section #1
RCRA Enforcement Branch

cc: Tom Schneider, OEPA-SWDO
Graham Mitchell, OEPA-SWDO
Jan Carlson, OEPA-CDO
Barb Brdicka, OEPA-CDO
Jeff Hurdely, OEPA-CDO
Jack Craig, U.S. DOE